

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
MICHAEL K. KOVALCHUK,	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	NOTICE OF REMOVAL
	)	
JOHN H. BABIARZ,	)	
JOHN TARPINIAN, and JESUP &	)	
LAMONT,	)	
Defendants.	)	
_____	)	

TO: **The Honorable Judges of the  
United States District Court  
for the District of Massachusetts**

Petitioner, John M. Babiarz, misnamed John H. Babiarz (hereinafter "Babiarz"), Defendant in the above entitled action, states:

1. Defendant desires to exercise his rights under the provisions of 28 U.S.C. §1441, *et. seq.*, to remove this action from the Superior Court for Worcester County, Worcester, Massachusetts, in which said cause is now pending under the name and style *Michael K. Kovalchuk v. John H. Babiarz, et al.*, Civil Action No. 09-2382.

2. The action is one in which this Court has original jurisdiction pursuant to both the Federal Arbitration Act, 9 U.S.C., §1, *et. seq.*, as well 28 U.S.C., §1331, as the causes of action are subject to the Federal Arbitration Act (the, "Act"), as well as Federal Securities laws and the Rules and Regulations of the Securities and Exchange Commission (the, "SEC").

3. Defendant was served a Summons and copy of the Complaint on or about November 3, 2009. See Exhibit A. At this time, all other defendants have either been dismissed or defaulted, and Babiarz is the sole defendant.

4. All other pleadings and papers served in the state court have been filed together herewith.

5. The Complaint, on its face, however, does not include a copy of the arbitration agreement, nor does it make reference to an agreement. Plaintiff Michael K. Kovalchuk furthermore denies the existence of a valid agreement.

6. On August 24, 2011, the state court granted Babiarz permission to serve a subpoena on the Custodian of Records to attempt to obtain a copy of the arbitration agreement.

7. Defendant received certified copies of Mr. Kovalchuk's signatures from the custodian on September 9, 2011, and received an affidavit certifying their accuracy, together with a copy of the Arbitration Agreement itself, on September 28, 2011. Exhibit D, at Affidavit of Amy Schnurbusch. Babiarz also received an affidavit certifying a true and accurate copy of the agreement from the former manager of Jesup & Lamont on or about the same day. *Id.* at Affidavit of Robert J. Oftring.

8. Therefore, the first time Babiarz received information that this controversy is subject to arbitration under the Act before the Financial Industry Regulatory Authority, Inc. ("FINRA").

9. Therefore, Babiarz's Notice of Removal is timely under the provisions of 28 U.S.C. §1446(b), which provides that:

"if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after the receipt by defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper, from which it may first be ascertained that the case is one which is or has become removable."

10. Babiarz will file a Notice of Removal of Action to the Federal Court and a copy of this Notice of Removal with the Clerk, Worcester Superior Court, 225 Main Street, Worcester, MA, pursuant to 28 U.S.C. §1446(d), a copy of which is attached hereto as Exhibit B.

11. Babiarz will also serve a written Notice to Opposing Counsel of Removal of Action to Federal Court, and copies of this Notice of Removal on opposing counsel pursuant to 28 U.S.C. §1446(d), a copy of which is attached hereto as Exhibit C.

12. All other pleadings and orders served upon Babiarz in the case to date are submitted herewith as Exhibits D through FF.

WHEREFORE, Petitioner/Defendant John M. Babiarez, misnamed John H. Babiarez, prays that the above action now pending against him in the Superior Court for Worcester County, Worcester, Massachusetts be removed therefrom.

Respectfully submitted,

**JOHN M. BABIARZ,**  
By his attorneys,

/s/ David A. Conti, Esq.  
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Dated:      October 7, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon counsel for Plaintiff, Paul L. Lees, 46 Middle Street Gloucester, MA 01930, by first Class Mail the 7<sup>th</sup> day of October, 2011.

/s/ David A. Conti, Esq.  
David A. Conti, Esq.